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community and university partners.*



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December 18, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST FOR DELEGATED AUTHORITY TO AMEND VARIOUS
EXISTING MEDICAL SERVICES AGREEMENTS AND EXECUTE FUTURE
MEDICAL SERVICES AGREEMENTS TO ADDRESS ASSIGNMENT OF
ELIGIBLE PROFESSIONAL INCENTIVE PAYMENTS UNDER THE HITECH
ACT
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval to delegate authority to the Director of the Department of Health Services to address the assignment of HITECH Act "eligible professional" incentive payments by contracted physicians, dentists, nurse practitioners and physician assistants to the County of Los Angeles by: 1) amending existing Part Time/Intermittent Specialty Medical Services Agreements and Physician Registry Services Agreements, 2) issuing new, future form Agreements for the aforementioned services; and 3) issuing "free standing" assignment agreements, if necessary.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the Director of Health Services (Director), or his designee, to amend existing Part-Time/Intermittent Specialty Medical Services (SMS) agreements, which satisfy traditional Civil Service exemptions permitting contracts, and which are exempt under the provisions of Los Angeles County Code (LACC) section 2.121, effective upon execution, to require the contractors to assign "eligible professional" (EP) incentive payments available

under the HITECH Act to the County of Los Angeles, Department of Health Services (DHS) and permit a one-time only reimbursement to each contractor who is an EP, up to \$1,500, to be applied toward the purchase of an electronic device and other DHS-approved technology.

2. Authorize the Director or his designee, to execute new form SMS Agreements, effective on execution through the current Board authorized SMS Agreement term ending on June 30, 2015, for the provision of as-needed specialty medical services on a part-time/intermittent basis, with qualified providers who are willing to agree to the County's terms and conditions including provisions requiring contractors to assign EP incentive payments available under the HITECH Act to DHS, and at negotiated rates not to exceed those previously approved by the Board, and to permit a one-time only reimbursement to each contractor who is an EP, up to \$1,500, to be applied toward the purchase of an electronic device and other DHS-approved technology .

3. Authorize the Director, or his designee, to amend existing Physician Registry Services (PRS) Agreements, which satisfy traditional Civil Service exemptions permitting contracts, and which are exempt under the provisions of LACC section 2.121, effective upon execution to require contractors to assign EP incentive payments available under the HITECH Act to DHS, and to permit a one-time only reimbursement to each contractor who is an EP, up to \$1,500, to be applied toward the purchase of an electronic device and other DHS-approved technology .

4. Authorize the Director or his designee, to execute new form PRS Agreements, effective on execution through the current Board authorized PRS Agreement term ending on June 30, 2015, for the provision of as-needed physician services on a part-time/intermittent basis, with additional qualified physician registries that are willing to agree to the County's terms and conditions including provisions requiring contractors to assign EP incentive payments available under the HITECH Act to DHS, and at negotiated rates not to exceed those previously approved by the Board, and to permit a one-time only reimbursement to each contractor who is an EP, up to \$1,500, to be applied toward the purchase of an electronic device and other DHS-approved technology.

5. Delegate authority to the Director, or his designee, to execute "free standing" assignment agreements with any contracted EP in the event that execution of a free standing assignment agreement is either legally required or deemed by the Director to be necessary to effectuate an assignment, in the alternative to amending an existing or issuing a new SMS or PMR Agreement, and with a provision that permits a one-time only reimbursement to each physician and/or dentist contractor who is an EP, up to \$1,500, to be applied toward the purchase of an electronic device and other DHS-approved technology.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first four recommendations will authorize the Director or his designee to amend a variety of existing medical services agreements, and where applicable, issue revised form

agreements in the future, to require contract physician providers to assign their EP incentive payments to the County/DHS to provide needed funding for the Electronic Health Record (EHR) System implementation.

Approval of the fifth recommendation will provide the Director with the discretion to issue a "free standing" assignment agreement, in the event that an amendment to an existing agreement or issuance of a new form agreement either is legally infeasible or deemed by the Director to be necessary to better effectuate the assignment.

Additionally, approval of the recommendations will permit the Director to reimburse each physician and dentist under contract who is an EP up to \$1,500, on a one-time only basis during the term of the applicable agreement, to fund the purchase of a electronic device and other DHS-approved technology, which action is consistent with the recent agreement that the County reached with its represented physicians and dentists which was approved by the Board on November 20, 2012..

Background

The federal government created Medicare and Medicaid incentive payments under the HITECH Act to promote the adoption and "meaningful use" of certified electronic health record ("EHR") technology by hospitals and EPs.

EPs must elect to pursue either a Medicare or Medicaid incentive. The maximum available Medicare incentive payment is anticipated to be \$44,000 over a five-year period per individual EP, but that amount decreases depending on when, over the five-year period, the EP actually qualifies for the payment. The available Medicaid incentive payment is anticipated to be \$63,750 over a six-year period per individual EP, making that incentive the better option and the one which DHS has decided to pursue.

For purposes of Medicaid incentives for EPs, "eligible professionals" are physicians, including licensed residents, optometrists, dentists, certified nurse midwives, nurse practitioners and physician assistants who practice in Federally Qualified Health Centers. EPs must not be hospital based, must satisfy specified Medicaid patient volume requirements, and must demonstrate the meaningful use of EHR technology at specific points in time in order to qualify for and receive incentive payments.

Under the federal law, EHR incentive payments are to be paid directly to the individual EPs and not to their employer unless the EP assigns the payment to the employer. With respect to those EPs who are under contract, DHS must have an assignment agreement in place or negotiated, which agreement provides for the payment of such funds to the County. Only then can the County gain access to those funds. The assignment agreement either may be incorporated into existing agreements or executed independently of existing agreements.

Implementation of Strategic Plan Goals

The recommended actions support Goal 2, Fiscal Sustainability, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

DHS estimates that the assignment by both employed and contract providers of their "eligible professional" incentive payments will generate as much as \$58.4 million to support DHS's

implementation of its EHR.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

DHS is in the process of procuring and implementing a comprehensive, enterprise-wide EHR system that will be deployed across DHS's hospitals and ambulatory clinics. EPs employed by DHS will be using the EHR to fulfill their employment obligations and EPs under contract to the County will be using the EHR to fulfill their contractual obligations.

DHS currently employs or contracts with the following EPs who will be required to assign their incentives: physicians, dentists, and nurse practitioners. DHS does not contract with nurse midwives, and although it uses physician assistants, under the HITECH Act, physician assistants must be used at either a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC).

Because DHS does not operate FQHCs or RHCs, the assignment by physician assistants is not relevant at this time. However, DHS is seeking FQHC status for its Comprehensive Health Centers, such that the availability of incentives to physician assistants may become relevant in the future. In that event, DHS is requesting the authority to require assignments should they prove feasible later.

Using the authority requested, DHS will amend its existing SMS and PMR Agreements to require the assignment of incentives. All contractors will be required to execute an assignment agreement, which agreement will be included as an exhibit to the applicable agreement. In the case of new providers, DHS will issue new form SMS and PMR Agreements that function likewise.

In the event that an EP refuses to assign the incentive payment, DHS will use its existing authority to terminate that EP's agreement. Case-by-case exceptions to this rule may be made for providers who furnish services that are unique or unusually difficult to replace.

Additionally, consistent with the County's recent agreement with the Union of Physicians and Dentists, DHS will offer its contracted physicians and dentists who are EPs, on a one-time only basis during the term of any applicable agreement, reimbursement of up to \$1,500 toward the purchase of an electronic device and other DHS-approved technology.

DHS will include a contractual provision that mandates repayment of this reimbursement in the event that a contractor terminates his or her contract prior to the elapse of one year of service subsequent to reimbursement for the equipment allowance.

The recommended actions will permit amendment of existing agreements and allow DHS to issue future agreements that contain the requisite assignment provisions to permit the County/DHS to obtain the EPs incentive payments. In the event that contracted EPs do not assign their incentive payments, or reassign them if already assigned to other entities, DHS may terminate the relevant contract.

DHS anticipates that both contracted and employed physicians and dentists will assign their incentive payments. As to employed physicians and dentists, DHS intends to adopt policies or procedures to require these EPs to assign or reassign their incentive payments to DHS in order to ensure that the assignment becomes a condition of employment. These policies or procedures will permit DHS to take appropriate disciplinary action, up to and including termination of employment, if an employed physician or dentist does not assign or reassign the incentive payment. DHS will coordinate with County Counsel, the Chief Executive Office and County Counsel on the drafting of these policies and procedures.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommendations will allow DHS to benefit from the assignment of "eligible professional" incentives from its EP contractors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is written in a cursive, fluid style.

Mitchell H. Katz, M.D.

Director

MHK:kh

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors